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9 Chapter 11 Trustee

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 In re

14 CEDAR FUNDING, INC.,

15 Debtor.

Case No. 08-52709 MM

Chapter 11

**CHAPTER 11 TRUSTEE'S MOTION  
FOR ORDER AUTHORIZING  
EXAMINATION OF STEVE POLETTI  
AND REQUIRING PRODUCTION OF  
DOCUMENTS PURSUANT TO  
FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 2004**

[No Hearing Required]

18  
19 R. Todd Neilson, the Chapter 11 Trustee (the "Trustee") in the above-  
20 captioned bankruptcy case for Cedar Funding, Inc. (the "Debtor"), submits this motion for an  
21 order pursuant to Federal Rule of Bankruptcy Procedure 2004(a) authorizing the examination  
22 of Steve Poletti regarding the Debtor and related entities and requiring the production of  
23 documents.

24 **I.**

25 **RELIEF REQUESTED**

26 The Trustee requests that the Court enter an order pursuant to Federal Rule of  
27 Bankruptcy Procedure 2004(a) authorizing an examination of Steve Poletti and production of  
28 documents. Steve Poletti was employed by the Debtor's related entity, Cedar Properties,

1 Inc., as a Vice President and Broker Associate and was actively involved in the business of  
2 the Debtor. The Trustee seeks an examination of Steve Poletti for purposes of investigating  
3 the financial affairs of the Debtor and related entities. The scope of the examination will be  
4 in accordance with Bankruptcy Rule 2004(b).

## 5 II.

### 6 STATEMENT OF FACTS

7 1. On May 26, 2008, the Debtor filed a voluntary petition in this Court for  
8 reorganization under Chapter 11 of the Bankruptcy Code. On June 17, 2007, this Court  
9 entered an order approving appointment of the Trustee.

10 2. Prior to the petition, the Debtor operated as a mortgage brokerage  
11 business in Monterey, California. David A. Nilsen was president of the Debtor and  
12 controlled virtually all aspects of the business.

13 3. Based on the Debtor's records, it is apparent that that the Debtor  
14 employed Steve Poletti. The Trustee believes that, among other responsibilities, Steve  
15 Poletti held the position of Vice President and Broker Associate. Neilson Decl., ¶ 3.

16 4. The Trustee seeks an examination of Steve Poletti and the documents in  
17 his possession to more fully investigate the Debtor's operations and those of related entities.  
18 Neilson Decl., ¶4.

## 19 III.

### 20 DISCUSSION

21 Rule 2004(a) provides that on motion of any party in interest, the Court,  
22 pursuant to Bankruptcy Rule 2004(b), may order the examination of an entity to allow an  
23 inquiry into the debtor's acts, conduct, financial affairs, or any matter that may affect the  
24 administration of the estate or any other matter relevant to the case. 9 *Collier on Bankruptcy*,  
25 ¶2004.02 (15<sup>th</sup> ed. Rev. 2008); *see also In re Dinubilo*, 177 B.R. 932, 940 (E.D. Cal. 1993).  
26 The scope of an examination under Bankruptcy Rule 2004 is "unfettered and broad," and an  
27 examination pursuant to this rule may extend to third parties who have had dealings with the  
28 debtor. *Id.* at 940; *In re Fin. Corp. of America*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990).

1 In *In re Dinubilo*, 177 B.R. at 940, the district court explained the broad scope  
2 of an examination under Bankruptcy Rule 2004 as follows:

3 The breadth of a Rule 2004 examination derives from the particular  
4 purpose for which Rule 2004 and its predecessor provisions were  
5 promulgated. Rule 2004 relates to the role of a trustee in bankruptcy.  
6 A trustee in bankruptcy is under a duty to maximize the realization of  
the debtor's estate by marshalling the estate's assets and instituting all  
necessary litigation. When a trustee takes over a Chapter 7 case, the  
trustee must learn quickly about the debtor entity.

7 Accordingly, the rule is meant enable the trustee to conduct an early investigation of estate  
8 matters. Some courts have referred to a Rule 2004 examination as a "fishing expedition"  
9 into issues affecting administration of the estate for which there are fewer procedural  
10 safeguards. *Id.* at 939 (citations omitted).

11 In this case, the Trustee seeks an examination of Steve Poletti regarding the  
12 Debtor's operations, its financial affairs, and its relationship to other entities. Steve Poletti  
13 appears to have been an employee who has "inside" knowledge of how Mr. Nilsen ran the  
14 company. In conjunction with the examination, the Trustee intends to request documents  
15 from Steve Poletti as set forth in the attached Exhibit A ("Document Production"). The  
16 Trustee represents that examination of Steve Poletti, including the Document Production, is  
17 necessary and appropriate at this time.

18 The Trustee requests that the Rule 2004(a) examination take place  
19 approximately twenty days after issuance of a subpoena, with the Document Production to  
20 take place at least one week earlier at the offices of Friedman Dumas & Springwater LLP.  
21 The oral examination of Steve Poletti will take place at a location within the Northern  
22 District of California, San Jose Division of this Court, in accordance with Bankruptcy Rules  
23 2004 and 9016.

24 The relief sought herein is based upon this motion and the Trustee's  
25 supporting declaration. This motion is being served on the Office of the United States  
26 Trustee, the Debtor, and persons having filed and requested special notice. Any subpoena  
27 pursuant to an order authorizing the Rule 2004 examination shall be served on the Debtor,  
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1 the Office of the United States Trustee, and all persons having filed and requested special  
2 notice.

3 **WHEREFORE**, the Trustee respectfully requests that the Court enter an order  
4 authorizing the Trustee to examine Steve Poletti on such date and time as may be contained  
5 in a subpoena commanding Steve Poletti's attendance at a deposition and production of  
6 documents in accordance with Rules 2004 and 9016 of the Federal Rules of Bankruptcy  
7 Procedure.

8  
9 Dated: November 26, 2008

FRIEDMAN DUMAS & SPRINGWATER LLP

11 By: /s/ Cecily A. Dumas  
12 Cecily A. Dumas  
13 Attorneys for R. Todd Neilson,  
14 Chapter 11 Trustee  
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